



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Enhance the Role of  
Demand Response in Meeting the State's Resource  
Planning Needs and Operational Requirements.

Rulemaking 13-09-011  
(Filed September 19, 2013)

**SIERRA CLUB AND ENVIRONMENTAL DEFENSE FUND REPLY COMMENTS  
ON PROPOSED DECISION ADOPTING GUIDANCE FOR FUTURE DEMAND  
RESPONSE PORTFOLIOS AND MODIFYING DECISION 14-12-024**

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Dated September 26, 2016

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Sierra Club and Environmental Defense Fund ("EDF") respectfully submit the following reply comments on the August 30, 2016 Proposed Decision ("PD") of Administrative Law Judge Hymes Adopting Guidance for Future Demand Response Portfolios and Modifying Decision 14-12-024. These comments are timely submitted pursuant to Rule 14.3(d) of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure.

**1. Ratepayer Advocates Have Also Called for Strengthening Prohibited Resource Verification Requirements to Require Metering or Derating as Proposed by Energy Division Staff.**

Like the environmental groups in this proceeding, the Office of Ratepayer Advocates ("ORA") also calls for the PD to be revised to strengthen compliance with the prohibition on back-up generation by requiring derating or metering as recommended in the Energy Division Staff Proposal.<sup>1</sup> In capitulating to the interests of market participants and utilities and instituting a purported compliance regime that requires no more than attestation rather than actual verification of prohibited resource usage, the PD forecloses the possibility of a legitimate audit and verification of compliance. The PD therefore fails to adequately protect ratepayers, the environment, and public health. Sierra Club and EDF further observe that the PD runs directly contrary to the aspirations set forth in the Commission's recently adopted core value statement, which recognizes the critical importance of accountability through "transparency to enable public scrutiny."<sup>2</sup> There can be no public scrutiny where there are no records to scrutinize. The Commission cannot, on the one hand, profess a commitment to accountability and transparency,

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<sup>1</sup> ORA Opening Comments p. 4.

<sup>2</sup> See <http://www.cpuc.ca.gov/aboutus/>

and on the other, continue to perpetuate black box inscrutability in its decisionmaking.

Fortunately, the PD's defects can be easily remedied. The PD need only recognize that metering of prohibited resources is a necessary component to development of an audit verification plan. As ORA states in its Opening Comments, "the cost to install meters should be insignificant compared to the incentives [] DR customers receive."<sup>3</sup> Details of implementation, such as the features of a required logging device, auditing protocols, and penalties for non-compliance, can be resolved and included in the development of the audit verification plan already contemplated under the PD. Absent these changes, the lack of meaningful verification will continue to compromise the integrity of a program that has great promise to play a vital role in California's clean energy economy.

## **2. Concerns Over Demand Response Participation of Facilities with On-Site Cogeneration Only Underscore the Critical Importance of a Metering Requirement.**

Concerns expressed by the California Energy Efficiency Industry Council ("CEEIC") and the Joint Demand Response Parties that the prohibition on back-up generation would limit participation in demand response programs for customers that operate baseload combined heat and power ("CHP") facilities are easily addressed and further highlight the need for metering, reporting and verification protocols. In our Opening Comments, Sierra Club and EDF proposed the following modification to Conclusion of Law 4:

4. ~~*The Commission should adopt a clearly identified prohibition on the use of certain resources in order to enforce its policy statement regarding these resources.*~~ ***The following resources may not be used to respond to a demand response event: distributed generation technologies using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in Combined Heat and Power (CHP) or non-CHP configuration.***

The issue for purposes of demand response participation is whether the prohibited resource *responds* to the demand response event. A baseload CHP resource that maintains the same output before, during, and after a demand response event is not responding to that event and therefore not implicated by this rule.

Because customers with baseload CHP resources are eligible to participate in demand

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<sup>3</sup> ORA Opening Comments p. 4 (citing ORA Reply Comments on Staff Proposal Regarding Use of Back-up Generation in Demand Response Programs, p. 5-8).

response programs, an audit compliance plan that includes metering requirements (which CHP resources should already have), as well as reporting and verification, is critical to ensure that a customer operating a baseload CHP resource that normally does not operate at full capacity does not increase capacity in response to a demand response event. A robust verification plan that includes metering allows customers with baseload CHP resources to participate in demand response programs while providing public assurance that these customers are responding to demand response events appropriately.

**3. SDG&E’s Comments Reflect a Fundamental Misunderstanding of the Respective Roles of Air Districts and the Commission in Regulating Use of Prohibited Resources.**

In an effort to dissuade the Commission from protocols to ensure compliance with Commission rules, SDG&E improperly compares air district and Commission processes and makes an unsubstantiated and attenuated connection between the prohibition on use of back-up generation to respond to demand response events and use of back-up generation in the event of natural disasters. Private entities are free to purchase and utilize back-up generation in a manner consistent with applicable air quality rules. Sierra Club and EDF have never argued otherwise. However, when ratepayer funds are used to *pay* these entities to reduce system load without relying on back-up generation to do so, it is reasonable to expect reporting to ensure compliance in exchange for receiving the financial benefit from participation in demand response programs. In addition, given the clear distinction between use of back-up generation for customers enrolled in demand response programs and use in the event of an emergency, SDG&E’s concerns over the effect of Commission demand response verification protocols on its “extensive safety efforts” speaks more to the shortcomings of SDG&E’s education and outreach and should in no way impair development of robust metering, reporting and verification.

**4. Bloom Energy’s Interpretation of the Loading Order is Flawed.**

In opening comments, Bloom Energy states

*...while some distributed fossil fuel generation technologies are dirty and inefficient and should not be allowed to participate in the state’s DR program, there also exist new, efficient, clean, DG technologies that are GHG-reducing compared to the grid. These technologies, including Bloom’s all-electric fuel cells, should be eligible for DR.*<sup>4</sup>

They go on to request “consistent, technology-neutral treatment of **all** technologies under this

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<sup>4</sup> Bloom Energy Opening Comments p. 3.

policy,”<sup>5</sup> using the loading order as a rationale for seemingly prioritizing their fuel cells in demand response programs. However, Bloom Energy’s interpretation of the loading order defies logic – the loading order requires preferential treatment of energy sources that do not rely on fossil fuels. As the Commission has determined, “the use of fossil-fueled [behind-the-meter] generation does not constitute Demand Response.”<sup>6</sup> Therefore, Bloom Energy’s assertion that “the most efficient all-electric fuel cells clearly fit within the Commission’s policies regardless of whether the fuel source is renewable or non-renewable” is wrong. The fact that Bloom Energy’s technology may be marginally less polluting relative to other fossil-fueled resources does not make them fossil-free – or entitle them to an exemption from the Commission’s prohibition. Sierra Club and EDF strongly urge the Commission to continue to maintain the ambition of its demand response guiding principles and continue its proper emphasis on resources that eliminate, rather than reduce, harmful emissions.

## **5. The Utility Role as Administrator of the Demand Response Auction Mechanism Should Be Eliminated.**

EDF and Sierra Club agree with The Utility Reform Network (“TURN”) that the measures adopted to ensure a “level playing field between utilities and third party demand response providers are too weak and will essentially maintain the status quo.”<sup>7</sup> Rather than preserving the utility role of administrators, the Commission should start to move away from this system, as the California Energy Storage Alliance suggests.<sup>8</sup> Removing utility control of what may very well continue to be an opaque, potentially anti-competitive process is essential to creating an even playing field. For this reason, EDF reiterates its suggestion that administration should be put in the hands of an independent third party, and the Commission should seek to ensure market actors that the avenue toward proper valuation of demand response resources is an open market that allows utilities and third parties to compete fairly.

## **Conclusion**

Sierra Club and EDF thank the Commission for the opportunity to submit these reply

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<sup>5</sup> *Id.*

<sup>6</sup> D.15-11-041 p. 16.

<sup>7</sup> TURN Opening Comments p. 1.

<sup>8</sup> CESA Opening Comments p. 5.

comments.

Dated September 26, 2016

Respectfully submitted,

/s/

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